

Uber drivers are contractors, not employees, U.S. labor agency says

Daniel Wiessner

(Reuters) - Drivers for ride-hailing company Uber Technologies Inc are independent contractors and not employees, the general counsel of a U.S. labor agency has concluded, in an advisory memo that is likely to carry significant weight in a pending case against the company and could prevent drivers from joining a union.



FILE PHOTO: Protestors march through the financial district, demanding fair wages and more transparency during a strike against Uber in San Francisco, California, U.S., May 8, 2019. REUTERS/Kate Munsch/File Photo

The recommendation by the office of general counsel Peter Robb, who was appointed to the National Labor Relations Board by President Donald Trump, was made in a memo dated April 16 and released on Tuesday.

The general counsel said in the memo that Uber drivers set their hours, own their cars and are free to work for the company's competitors, so they cannot be considered employees under federal labor law.

A ruling on the case is to be made by an NLRB regional director. Advisory memos from the general counsel's office are generally upheld in rulings. Any decision could be appealed to the NLRB's five-member board, which is also led by Trump appointees but is independent of the general counsel.

The memo will not affect scores of lawsuits claiming Uber drivers should be treated as employees under federal and state wage laws.

San Francisco-based Uber in a statement said it is "focused on improving the quality and security of independent work, while preserving the flexibility drivers and couriers tell us they value."

Uber shares were up 6.4 percent at \$39.46 in late trading on the New York Stock Exchange.

The memo signaled a sharp turn for the general counsel's office, which acts like a prosecutor in NLRB cases, and during the administration of Democratic President Barack Obama maintained that many gig-economy workers are misclassified as independent contractors.

Under the National Labor Relations Act, independent contractors cannot join unions and do not have legal protection when they complain about working conditions.

Uber, its top rival Lyft Inc, and many other "gig economy" companies have faced dozens of lawsuits accusing them of misclassifying workers as independent contractors under federal and state wage laws.

Employees are significantly more costly because they are entitled to the minimum wage, overtime pay and reimbursements for work-related expenses under those laws.

Uber, in a filing with the U.S. Securities and Exchange Commission last week, said it would pay up to \$170 million to settle tens of thousands of arbitration cases across the country with drivers who claim they were misclassified. Uber denied any wrongdoing.

The company has also agreed to pay an additional \$20 million to end long-running lawsuits by thousands of drivers in California and Massachusetts.

The U.S. Department of Labor in a memo released last month said an unidentified "gig economy" company's workers were not its employees under federal wage law

because it did not control their work.

The company, which appeared from the memo to provide house-cleaning services, had a similar relationship with its workers as Uber does with drivers.

**Reporting by Daniel Wiessner in New York and Akanksha Rana in Bengaluru;
Editing by Dan Grebler and Leslie Adler**